REMARKS/ARGUMENTS

I.   Introduction

This amendment is submitted in response to the Office Action dated
September 28, 2006. The deadline for responding has been extended to January 28,
2006 by way of a request for a 1 month extension of time made herewith.

Claims 1-14 are now pending.

Claim 9 stands objected to for informalities. Claim 9 has been amended to
correct these informalities. Also, a typographical error in the claim has been
corrected.

Claims 1-7 and 9-13 stand rejected under 35 U.S.C. 102(e) as being
anticipated by U.S. Patent Publication No. 2003/0195861 to McClure et al.
(hereinafter "the McClure et al. publication"). Claims 8 and 14 stand rejected under
35 U.S.C. 103(a) as being unpatentable over the McClure et al. publication in view of
U.S. Patent Publication No. 2004/0028035 to Read (hereinafter "the Read et al.
publication").

Applicant will now address and overcome each of the Examiner's rejections of
a pending claim.

II.   Claims 1-14 are Patentable

Claims 1-7 and 9-13 stand rejected under 35 U.S.C. 102(e) as being
anticipated by the McClure et al. publication.

Claim 1 contains the feature:

> "monitoring a second side of said firewall to detect any
> transmitted test signals that pass through said firewall".

This feature is not taught or suggested by the McClure et al. publication. The
Examiner states that this feature is described in paragraph 0324 of the McClure et al.
publication. However, this paragraph simply describes "testing" open ports on a

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target machine. There is no teaching or suggestion of monitoring "a second side of said firewall". Further, there is no detection "of transmitted test signals". There is only an analysis of the target computer's response to a test signal from an **external** test device. For instance, it is stated at line 24 of paragraph 0324: "an attempt is made to strip useful information **from the target computer**" [emphasis added].

Claim 1 further contains the feature of:

> "*identifying any open ports that are not associated with said established communications session, which passed at least one of said transmitted test signals, as erroneously open ports*".

As is described on lines 7-9 of paragraph 0324 of the McClure et al. publication:

> "Prior host discovery and port discovery have provided target 1 data 804 and target 2 data 806 that includes an **identification of open ports found on each target computer** [emphasis added]."

Also, as stated in paragraph 0010 (Summary of the Invention):

> "(2) a multiple-tier port scanning method for determination of what network addresses are active and what ports are active at those addresses."

There is no teaching or suggestion in these paragraphs, or in paragraphs 0355 and 361-363 (cited by the Examiner to support the reference to the above feature of claim 1), or elsewhere in the McClure et al. publication that would indicate which open ports were "erroneously open", nor would there be a way in the system described in the McClure et al. publication to ascertain such information.

For at least these reasons, claim 1 is patentable over the McClure et al. publication.

Claims 2-8, which depend from claim 1, are therefore also patentable over the cited art.

Additionally, claim 5 and claims 6-8 which depend therefrom, contain the feature:

> "*synchronizing the first and second test devices to a common clock located external to said first and second test devices*".

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The Examiner states on page 3 of the Office Action:

> "Timing synchronization circuitry for synchronizing said session signal generator and said probe signal generator to at least one of another test device and a clock signal source located external to said first test device (paragraph 0080)."

This portion of the cited reference describes sending "RFC-compliant TCP 'SYN' (synchronization) packets to a target computer." However, not only is there no teaching or suggestion in the cited paragraph of synchronizing "first and second test devices to a common clock", but there is no teaching or suggestion in the reference of even having "first and second test devices". The system of the McClure et al. publication is a **single test system** which sends signals to a **target computer.** There is no teaching or suggestion of multiple test systems, or of synchronizing such systems, or of using such systems in a coordinated manner to monitor both sides of a firewall. As is stated in lines 4-8 of paragraph 0010 of the McClure et al. publication:

> "(1) a non-destructive identification of target computer operating system; (2) a multiple-tier port scanning method for determination of what network addresses are active and what ports are active at those addresses."

Also, at lines 9-12 of paragraph 0011:

> "The system and method can be run remotely from a monitoring computer outside the target network, **or can be run by a monitoring computer included within the target network**" [emphasis added].

For these additional reasons, claim 5 and claims 6-8, which depend therefrom, are patentable over the cited art.

Claim 9 contains the feature:

> "timing synchronization circuitry for synchronizing said session signal generator and said probe signal generator to at least one of another test device and a clock signal source located external to said first test device".

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As discussed above in relation to claims 1 and 5, the McClure et al. publication does not teach or suggest this feature.

Claim 9 further contains the feature:

> "means for monitoring a second side of said firewall to detect any transmitted test signals that pass through said firewall".

As discussed above in relation to claims 1 and 5, the McClure et al. publication does not teach or suggest this feature.

Claim 9 also contains the feature:

> "an analysis module for identifying any open ports that are not associated with an established communications session, which passed at least one of said transmitted test signals, as erroneously open ports".

As discussed above in relation to claims 1 and 5, the McClure et al. publication does not teach or suggest this feature.

For at least these reasons, claim 9 is patentable over the McClure et al. publication.

Claims 10-14, which depend from claim 9, are therefore also patentable over the cited art.

III. Claims 8 and 14 are Patentable

Claims 8 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the McClure et al. publication in view of the Read et al. publication.

As discussed above, claims 8 and 14 are patentable for at least the reason that they are dependent on allowable claims (1, 5, and 9, respectively). The Read et al. publication is simply a communications system, not a test system, and as such does not teach or suggest any of the features discussed above in relation to claims 1, 5, and 9 which are missing from the McClure et al. publication. Therefore, no combination

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of the McClure et al. publication and the Read et al. publication render any of the pending claims, as amended, unpatentable.

IV.   Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully submit that the pending claims, as amended, are in condition for allowance. Accordingly. Applicants request that the Examiner pass this application to issue.

If there are any outstanding issues which need to be resolved to place the application in condition for allowance **the Examiner is invited to contact Applicants' undersigned representative by phone to discuss and hopefully resolve said issues.** To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136 is hereby made and any required fee is authorized to be charged to the deposit account of Straub & Pokotylo, deposit account number 50-1049.

Respectfully submitted,

January 26, 2007
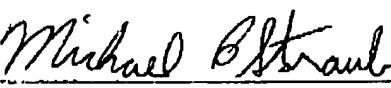
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